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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 11 2006
EAC 05 062 51265

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Z Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a "banking specialist." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In his initial filing, the petitioner submits documentation of his academic and professional credentials, such as a Master of Business Administration degree from Tbilisi State University in the Republic of Georgia and real estate training certificates from Shorebank Advisory Services. The petitioner also submits two witness letters. [redacted] deputy program manager at Shorebank Advisory Services, states:

> I met [the petitioner] when he was working for JSC "Bank of Georgia" (BoG) in the capacity of Credit Officer and our company was appointed as the consulting company for Georgian Real Estate development program. . . .
>
> [The petitioner], among seven credit officers, had been chosen from the different branches of BoG as the best ones. His primary responsibility included finding appropriate customers, conduced pre-financing interviews, checking customers actual monthly incomes, drawing memo's and cash flow, defending projects on credit committee, checking after disbursement borrower's financial condition and so on. . . .
>
> During that period [the petitioner] demonstrated an ability and desire to grow professionally and personally. On many occasions [the petitioner] has proved his problem solving abilities by finding creative solutions to the many challenges of commercial lending to individuals and legal entities in complex environment of an emerging market economy.
>
> [The petitioner] is a hardworking person pursuing the goal of becoming a high qualified professional in the local and global economy. [The petitioner] has impressed me as a

> disciplined, diligent and responsible person with a keen drive to keep abreast of new development in the financial field in Georgia and abroad. I believe that at this point [the petitioner] has appropriate educational background, good work experience, communication skills and an exposure to the Western practices, which will be a true asset to any country or company he decided to connect his future.

(*Sic*). [redacted] deputy general director of the Bank of Georgia, states:

> [The petitioner] worked with Bank of Georgia, Tbilisi from August 1998. [The petitioner] is a competent and committed person, who confidently accomplishes whatever he sets out to do. His ability to reflect critically and creatively on complex issues, his intellectual curiosity and initiative, and his interpersonal communication skills are highly developed. The quality of his academic preparation can be described as very good. He is a young man with a strong sense of discipline and responsibility. He possesses both motivation and ability to become an innovative and dedicated professional.

The letters quoted above do not indicate that the petitioner stands out from others in his field to an extent that would justify a national interest waiver. Rather, they appear to be little more than reference letters that one might present to a prospective employer.

The director issued a request for evidence on May 23, 2005, instructing the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director stated: "The impact of an individual economist working in a specific area is so diluted at the national level as to be negligible. The record does not show that the beneficiary's efforts will impact the nation to a more significant degree than others who are similarly employed." The director also requested "evidence that sets the beneficiary apart from other highly qualified economist [*sic*]."

In response, the petitioner states:

> During . . . my activity at Georgia's leading financial institute – Bank of Georgia, I tried to examine my innovations and know-how methods in business administration. My innovations were highly appreciated by top managers of Bank of Georgia and I was advanced to higher positions very quickly. . . . [M]y salary was unusually high . . . 4-5 times higher than average national level. . . .

The petitioner submits evidence relating to his remuneration, training, and membership in professional associations. These factors are all means to support a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). From the plain wording of the statute and regulations, it is clear that exceptional ability is not *prima facie* evidence of eligibility for the waiver; aliens of exceptional ability are, generally, subject to the job offer requirement. Therefore, it would serve no productive purpose to discuss this evidence in detail.

The petitioner adds that he has started a company, [redacted] "for testing my theoretical ideas in economics." The petitioner also has a "job offer from [redacted] General Contractor on [a] very

promising position." Documents in the record show that the petitioner incorporated [redacted] in June 2005, six months after he filed the petition in December 2004. The type of business is identified as "management & design." Establishing one's own corporation does not cause one to be eligible for the waiver, but even if it were otherwise, the company did not exist when the petitioner filed the petition. The petitioner filed the founding documents shortly after the director issued the request for evidence. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The same objection applies to the August 1, 2005 job offer from [redacted] The contractor's offer of a managerial position to the petitioner does not, on its face, demonstrate eligibility for a national interest waiver. There is no indication that the petitioner's work would have national impact, as opposed to simply advancing the interests of that one particular private company. The petitioner cannot show that he merits a waiver of the job offer requirement by showing that he has a job offer.

[redacted] owner of [redacted] "a construction company that does rehabilitation and renovation work in the Philadelphia area," states that the petitioner "has worked for me as a supervisor on several projects already, and I have found his ability to facilitate and coordinate workers and scheduling to be a great asset." Mr. [redacted] states that the petitioner's skills have led him to contemplate an expansion of his business that he would not otherwise have considered. As with Mr. [redacted] letter, Mr. [redacted] letter establishes that the petitioner's skills are attractive to a prospective employer, but if this were a basis for a waiver, then the only aliens subject to the job offer requirement would be those who have little to offer to prospective employers.

We note that both of the above employers are building contractors, whereas the petitioner had previously indicated that he seeks employment in "management in food industry, banking specialist, real estate loan officer." The petitioner's employment prospects therefore appear to be outside of his area of claimed specialized expertise.

The petitioner states that he is responsible for several innovations, but he specifies only one: "The last and most important innovations designed by me were a new approach and methodology for so called "Business Games." I would not go deep into technical nuances of my methodology but it is significant that several independent tests showed considerable improvement of outcome." The petitioner submits no documentation of these "independent tests." He does, however, submit a letter from [redacted] president of the Georgian Academy of Economical Sciences, who states that the petitioner's "new approach for so called 'Business Games,'" consisting of the "replacement of traditional scheme of business team, consisting from four different kinds of managers (leader, critic, executive and ideologist), to three-member team (opponent, proponent and customer) [*sic*]." Mr. [redacted] asserts that the petitioner's "extraordinary ability and talents are critical to the field, and he has opened up an important area of business modeling." The record is silent as to the extent to which others have adopted the petitioner's method of business modeling.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's field but finding that the petitioner has not established the national scope of his work or that the petitioner, in particular, offers a

prospective national benefit that outweighs the protection of U.S. workers inherent in labor certification. The director stated that the waiver request was apparently "based in large part on the beneficiary's training, education and work experience," areas that the labor certification process already takes into account. The director concluded that the petitioner failed to "persuasively demonstrate that the beneficiary's individual contributions as an economist in Philadelphia is [*sic*] beyond the capabilities of any number of trained professionals in his field." The director's decision is consistent with published precedent. General attestations regarding the skills or qualifications of a given alien do not, in and of themselves, establish eligibility for the waiver. *See Matter of New York State Dept. of Transportation* at 220.

On appeal, the petitioner states that the director "ignored the Independent Expert opinion of Academician Prof. [redacted] . . . Maybe the Agency is unaware [of] what it means to be [a] member of [the] Georgian Academy of Sciences." The petitioner submits background information about the Georgian Academy of Sciences, and about the source of his "Independent Expert opinion." This information spells the name [redacted] rather than [redacted] These materials establish Prof. [redacted]s credentials (which the director had not questioned), but the material issue here is not Prof. [redacted] standing in the field, but that of the petitioner.

The petitioner asserts that the director failed to consider the importance of the petitioner's contributions to "business games theory," but the petitioner has not independently established the importance of those contributions, nor has he even shown that U.S. businesses rely on "business games" to the same extent as Georgian companies. Prof. [redacted] letter does not establish that the petitioner has made an important contribution to economics or business, that witness merely expressed his own opinion, saying: "I believe that the initial result of [the] new conceptual approach to business modeling will have a national impact." This is not evidence of national impact, but rather a speculative expectation that such impact may result in the future. Conjecture of this type is too tenuous to form a reliable basis for a waiver. In terms of the subsequent fruition of the petitioner's studies, we reiterate here that the petitioner's employment prospects in the United States have been limited to management positions with construction contractors.[1]

The petitioner asserts that the director "wrongly concluded that [a] tri-language speaking manager with excellent education and experience is only [a] case of local area importance." The petitioner contends that, with perhaps five million Russian-speaking immigrants in the United States, his expertise is national in scope. (The petitioner offers no figures on the number of Georgian-speaking immigrants.) By the petitioner's logic, an English-speaking immigrant has access to a potential client base of hundreds of millions; but this does not convey national scope to every English-speaking businessperson. It is not clear how the petitioner's ability to speak three languages would qualify him for a waiver. The petitioner's language skills may distinguish him from the majority of U.S. businesspersons, but in this sense "distinguish" does not necessarily mean "elevate." Because most of the world population speaks a native language other than English, it would be unrealistic for us to find that fluency in a language other than English is a compelling factor for a national

[1] Absent evidence that such managers are required to hold bachelor's degrees, this work arguably compromises the petitioner's status as a member of the professions as 8 C.F.R. § 204.5(k)(2) defines that term, but further discussion of this issue would not affect the outcome of this decision.

interest waiver.[2] Being a businessman is not inherently grounds for a waiver, and speaking Russian is not inherently grounds for a waiver; the petitioner offers no persuasive reason why being a Russian-speaking businessman should be grounds for a waiver.

The petitioner states: "I began to realize my goals by creating my own company." As noted elsewhere in this decision, the petitioner did not create this company until after the director informed the petitioner that his initial filing was deficient. If the petitioner remains convinced that his work with [redacted] qualifies him for a national interest waiver, the proper course of action would be for the petitioner to file a new petition. As it stands, the petitioner has not even explained, with any specificity, what [redacted] does; the record establishes the company's existence, and little else.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

[2] Compare *Matter of New York State Dept. of Transportation* at 221, which rejected the argument that an alien's engineer's familiarity with the metric system (which is the dominant system of measurement in much of the world) was a strong factor in favor of approving the waiver.